

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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ALVIN BALDUS, CARLENE BECHEN, ELVIRA  
BUMPUS, RONALD BIENDSEIL, LESLIE W.  
DAVIS, III, BRETT ECKSTEIN, GLORIA  
ROGERS, RICHARD KRESBACH, ROCHELLE  
MOORE, AMY RISSEEUW, JUDY ROBSON,  
JEANNE SANCHEZ-BELL, CECELIA  
SCHLIEPP, TRAVIS THYSSEN, CINDY  
BARBERA, RON BOONE, VERA BOONE,  
EVANJELINA CLEERMAN, SHEILA COCHRAN,  
MAXINE HOUGH, CLARENCE JOHNSON,  
RICHARD LANGE, and GLADYS MANZANET,

Plaintiffs,

Case No. 11-C-00562  
JPS-DPW-RMD

TAMMY BALDWIN, GWENDOLYNNE MOORE  
and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government  
Accountability Board, each only in his official  
capacity: MICHAEL BRENNAN, DAVID  
DEININGER, GERALD NICHOL, THOMAS  
CANE, THOMAS BARLAND, and TIMOTHY  
VOCKE, and KEVIN KENNEDY, Director and  
General Counsel for the Wisconsin Government  
Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E.  
PETRI, PAUL D. RYAN, JR., REID J. RIBBLE,  
and SEAN P. DUFFY,

Intervenor-Defendants.

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VOCES DE LA FRONTERA, INC.,  
RAMIRO VARA, OLGA VARA,  
JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-C-1011  
JPS-DPW-RMD

Members of the Wisconsin Government  
Accountability Board, each only in his official  
capacity: MICHAEL BRENNAN, DAVID  
DEININGER, GERALD NICHOL, THOMAS  
CANE, THOMAS BARLAND, TIMOTHY  
VOCKE, and KEVIN KENNEDY, Director and  
General Counsel for the Wisconsin Government  
Accountability Board,

Defendants.

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**ANSWER TO INTERVENING COMPLAINT OF TAMMY BALDWIN,  
GWENDOLYNNE MOORE, AND RONALD KIND FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

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Defendants, Michael Brennan, David Deininger, Gerald Nichol, Thomase Case, Thomas Barland, Timothy Vocke, and Kevin Kennedy (each in their official capacity), by their attorneys, J.B. Van Hollen, Attorney General, and Maria S. Lazar, Assistant Attorney General, and Reinhart Boerner Van Deuren, s.c., by Patrick J. Hodan, Daniel Kelly, and Colleen E. Fielkow, answer the Intervening Complaint of Tammy Baldwin, Ronald Kind and Gwendolynne Moore as follows:

**SUMMARY**

The Intervenor-Plaintiffs are incumbent Democratic members of the United States House of Representatives, currently representing the following Wisconsin Congressional districts: Second (Rep. Baldwin), Third (Rep. Kind) and Fourth (Rep. Moore). Each of

them expects to or may be a candidate for re-election to their current positions during the 2012 elections.

**Answer to first summary paragraph:** Defendants ADMIT intervenor-plaintiffs are incumbent Democratic members of the United States House of Representatives, currently representing the following Wisconsin Congressional districts: Second (Rep. Baldwin), Third (Rep. Kind), and Fourth (Rep. Moore). Defendants lack information sufficient to form a belief as to the truth of the remaining matters asserted and so DENY the same.

The First Amended Complaint in this instant action challenges the legality of two recently passed Wisconsin bills – 2011 Wisconsin Act 43 and 2011 Wisconsin Act 44. Act 43, as it currently exists, pertains to the “legislative districts” of Wisconsin, which will apply to future elections to the Wisconsin Legislature and State Senate. The First Amended Complaint seeks declaratory and injunctive relief, as well as a judicial redistricting plan and costs under various state and federal laws and constitutions. (1st Am. Compl., ¶¶ 16-20, 27-44, 62-71).

**Answer to second summary paragraph:** Defendants admit the First Amended Complaint related to 2011 Wisconsin Acts 43 and 44, but affirmatively assert that it has been superseded by a Second Amended Complaint. Defendants ADMIT that 2011 Wisconsin Act 43 pertains to the legislative districts for the Wisconsin Assembly and the Wisconsin Senate. The defendants assert that the First Amended Complaint was effective according to its terms prior to the plaintiffs’ filing of the Second Amended Complaint. The defendants DENY all other allegations in this paragraph.

The First Amended Complaint also challenges the legality of 2011 Wisconsin Act 44, which pertains to the Congressional Districts of Wisconsin. (1st Am. Compl., ¶¶ 21-24, 45-61, 72-79). The Plaintiffs allege that Act 44 violates the United States Constitution. (1st Am. Compl., ¶¶ 45-61, 72-79). On November 10, 2011, Wisconsin’s Republican Members of the House of Representatives, F. James Sensenbrenner, Jr., Thomas E. Petri, Paul D. Ryan, Jr., Reid J. Ribble and Sean P. Duffy, filed a Motion to Intervene and Proposed Answer-in-Intervention, supporting the constitutionality of Act 44 without taking a position as to the claims regarding Act 43.

**Answer to third summary paragraph:** Defendants ADMIT the First Amended Complaint related to 2011 Wisconsin Acts 43 and 44, but affirmatively assert that it has been superseded by a Second Amended Complaint. Defendants ADMIT that 2011 Wisconsin Act 44 pertains to the legislative districts for the Wisconsin members of the United States House of Representatives. The defendants assert that the First Amended Complaint was effective according to its terms prior to the plaintiffs' filing of the Second Amended Complaint. The defendants ADMIT that Wisconsin's Republican Members of the House of Representatives, F. James Sensenbrenner, Jr., Thomas E. Petri, Paul D. Ryan, Jr., Reid J. Ribble, and Sean P. Duffy, filed a Motion to Intervene and Proposed Answer-in-Intervention, supporting the constitutionality of Act 44 without taking a position as to the claims regarding Act 43. The defendants DENY all remaining allegations in this paragraph.

Intervenor-Plaintiffs, Wisconsin's Democratic House Members, like their Republican colleagues, have no legal interest in the legality of Act 43 and the disposition of the various claims of the Plaintiffs as they pertain to Act 43. The Intervenor-Plaintiffs do, however, claim a distinct legal interest in the action as it pertains to 2011 Wisconsin Act 44, which they believe is, as alleged in the First Amended Complaint and herein, void under the United States Constitution.

**Answer to fourth summary paragraph:** The defendants ADMIT that intervenor-plaintiffs, Wisconsin's Democratic House Members have no legal interest in the legality of 2011 Wisconsin Act 43 or the disposition of the various claims of the plaintiffs as they pertain to Act 43. The defendants ADMIT that intervenor-plaintiffs claim a distinct legal interest in the action as it pertains to 2011 Wisconsin Act 44 and that they have an opinion on the Act's constitutionality. The defendants DENY all remaining allegations in this paragraph.

The Intervenor-Plaintiffs, like the Intervenor-Defendants, therefore will, throughout this Complaint-in-Intervention, allege only those facts and claims which pertain to Act 44 and will take no position on the facts and claims pertaining to Act 43. For purposes of clarity and continuity the Complaint-in-Intervention will maintain the

numbering and format of the First Amended Complaint, indicating those paragraphs of the First Amended Complaint which pertain only to Act 43.

**Answer to fifth summary paragraph:** This summary paragraph contains no factual allegations that require a response. However, to the extent any court should construe this paragraph as containing factual assertions requiring an answer, the defendants lack information sufficient to form a belief as to the truth of the matters alleged and so DENY the same.

### **JURISDICTION**

1. Jurisdiction in this court is proper under 28 U.S.C. § § 1331, 1343(a)(3) and (4), 1357 and 2284 for claims for legal and equitable relief arising under the federal constitution and federal law and supplemental jurisdiction is proper under 28 U.S.C. § 167 to hear claims under Wisconsin's constitution and laws. This Court has jurisdiction under 28 U.S.C. § § 2201 and 2202 to grant the declaratory relief requested.

**Answer to ¶ 1:** Based upon this Court's Decision and Order dated October 21, 2011, and without waiving any rights to appeal, defendants ADMIT the allegations of ¶ 1.

2. This Complaint challenges only the constitutionality of Wisconsin's legislatively-adopted boundaries for the state's Congressional districts, found in chapter 3 of the Wisconsin statutes. While these Congressional districts are based on the 2010 census, they are nevertheless unconstitutional and violate state and federal law. The Intervenor-Plaintiffs take no position on the legality of 2011 Wisconsin Act 43.

**Answer to ¶ 2:** Defendants ADMIT intervenor-plaintiffs are challenging the constitutionality of 2011 Wisconsin Act 44. Defendants also ADMIT that the intervenor-plaintiffs take no position on the legality of 2011 Wisconsin Act 43. Defendants DENY that the new congressional district boundaries are unconstitutional or that they violate state or federal law. Defendants further DENY all remaining allegations in ¶ 2.

3. A three-judge panel has already been convened in this matter pursuant to 28 U.S.C. § 2284. Three-judge panels were similarly convened in Wisconsin apportionment cases in 1982, 1992 and 2002.

**Answer to ¶ 3:** Defendants ADMIT that a district court of three judges has been empanelled to hear this case. Defendants further ADMIT that three-judge panels were convened

in 1982, 1992, and 2002, to resolve complaints regarding redistricting plans in the absence of legislatively created and enacted plans. Finally, defendants assert that there are valid, constitutional redistricting plans already enacted by the State Legislature.

### **VENUE**

4. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b) and (c). At least one of the defendants, at least nine of the individual plaintiffs and at least one of the intervenor-plaintiffs reside and vote in the Eastern District of Wisconsin.

**Answer to ¶ 4:** To the extent that this Court may properly take jurisdiction of this action, venue is properly in the Eastern District of Wisconsin. Defendants lack information sufficient to form a belief as to the truth of the allegations regarding the residences of the individual plaintiffs and put intervenor-plaintiffs to their proof.

### **PARTIES**

#### ***Plaintiffs***

5. The Intervenor-Plaintiffs are incumbent Democratic members of the United States House of Representatives, currently representing the following Wisconsin Congressional districts: Second (Rep. Baldwin), Third (Rep. Kind) and Fourth (Rep. Moore). Each of them expects to or may be a candidate for re-election to their current positions during the 2012 election or elections.

**Answer to ¶ 5:** Defendants ADMIT the intervenor-plaintiffs are incumbent Democratic members of the United States House of Representatives, currently representing the following Wisconsin Congressional districts: Second (Rep. Baldwin), Third (Rep. Kind), and Fourth (Rep. Moore). Defendants lack information sufficient to form a belief as to the truth of the remaining matters asserted and so DENY the same.

#### ***Defendants***

6. Intervenor-Plaintiffs incorporate by reference the allegations contained within paragraph 6 and subparagraphs of the First Amended Complaint, only so far as those allegations pertain to 2011 Wisconsin Act 44 and the legality thereof.

**Answer to ¶ 6:** Defendants ADMIT the intervenor-plaintiffs wish to incorporate certain factual allegations from paragraph 6 of the Plaintiffs' First Amended Complaint. However, it is impossible to know what parts of paragraph 6 the intervenor-plaintiffs are incorporating because the incorporation is effective "only so far as those allegations pertain to 2011 Wisconsin Act 44 and the legality thereof." As a result, the defendants lack information sufficient to form a belief as to the truth of the matters alleged and so DENY the same.

6a. Intervenor-Defendants F. James Sensenbrenner, Jr., Thomas E. Petri, Paul D. Ryan, Jr., Reid J. Ribble and Sean P. Duffy are all Republican Members of the United States House of Representatives. Intervenor-Defendants have moved this Court for leave to intervene, claiming an interest in the subject matter of this action.

**Answer to ¶ 6(a):** Defendants ADMIT the allegations of ¶ 6(a).

#### **CONSTITUTIONAL AND STATUTORY PROVISIONS/FACTS**

7. The Constitution of the United States requires that Members of the House of Representatives be elected from district of equal population. U.S. Cons. Art. I, § 2; U.S. Const. amend. XIV, § 2. Congressional districts must ensure continuity, compactness and to some extent, competitiveness. Other portions of paragraph 7 of the First Amended Complaint pertain to Act 43, to which the Intervenor-Plaintiffs claim no interest.

**Answer to ¶ 7:** Defendants ADMIT that the United States Constitution is effective according to its terms and DENY any characterization inconsistent with those terms.

8. The U.S. Constitution, Article I, Section 2, provides that: "Representatives...shall be apportioned among several states...according to their respective numbers..." It further provides, "The House of Representatives shall be composed of members chosen every second year by the people of the several states..."

**Answer to ¶ 8:** Defendants ADMIT that the United States Constitution is effective according to its terms and DENY any characterization inconsistent with those terms.

9. The Due Process Clause of the Fifth Amendment provides that, "[n]o person shall...be deprived of life, liberty, or property, without due process of law."

**Answer to ¶ 9:** Defendants ADMIT that the United States Constitution is effective according to its terms and DENY any characterization inconsistent with those terms.

10. The Fourteenth Amendment, provides, in relevant part:

No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person to life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

**Answer to ¶ 10:** Defendants ADMIT that the United States Constitution is effective according to its terms and DENY any characterization inconsistent with those terms.

11-12. Paragraphs 11-12 of the First Amended Complaint pertain only to the disposition of Wisconsin Act 43, in which the Intervenor-Plaintiffs claim no legal interest. This paragraph is a placeholder to preserve the numbering and format of the complaint.

**Answer to ¶¶ 11-12:** Defendants ADMIT these paragraphs have no relevance to the Intervenor-Plaintiffs' Complaint and DENY all remaining allegations of these paragraphs.

13. Every 10 years and pursuant to 2 U.S.C. § 2a, the President of the United States is to transmit to Congress, based on the decennial census, "the number of persons in each State," and, "the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives..." Pursuant to 2 U.S.C. § 2c, "there shall be established by law a number of districts equal to the number of Representatives to which such States is so entitled, and Representatives shall be elected from districts so established..."

**Answer to ¶ 13:** Defendants ADMIT that the United States Code is effective according to its terms and DENY any characterization inconsistent with those terms.

14. The U.S. Department of Commerce Bureau of the Census conducted the decennial census of the United States in 2010.

**Answer to ¶ 14:** Defendants ADMIT the allegations in ¶ 14.

15. On December 21, 2010, pursuant to statute, the Census Bureau announced and certified the population of Wisconsin to be 5,686,986 as of April 1, 2010. A copy of the Census Bureau's Apportionment Population and Number of Representatives, by state, was attached as Exhibit A to the First Amended Complaint and is incorporated by reference.



**Answer to ¶ 15:** Defendants ADMIT that on December 21, 2010, the Census Bureau announced and certified the actual enumeration of the population of Wisconsin at 5,686,986 as of April 1, 2010, which is an amount greater than the 2000 census. Defendants lack information sufficient to form a belief as to the truth of whether Exhibit A to the First Amended Complaint is a copy of the Census Bureau's Apportionment Population and Number of Representatives, by state, and so DENY the same. Defendants DENY all remaining allegations in ¶ 15.

***Legislative Districts***

16-17. Paragraphs 16 and 17, including all subparagraphs, of the First Amended Complaint pertain only to the disposition of Wisconsin Act 43, in which the Intervenor-Plaintiffs claim no legal interest. This paragraph is a placeholder to preserve the numbering and format of the complaint.

**Answer to ¶¶ 16-17:** Defendants ADMIT these paragraphs have no relevance to the Intervenor-Plaintiffs' Complaint and DENY any remaining allegations of these paragraphs.

18. Redistricting legislation was drafted on behalf of the majority party's leadership in the Wisconsin Assembly and Senate and first released to the public on July 8, 2011.

**Answer to ¶ 18:** Defendants assert that the State Legislature drafted the redistricting legislation, and that 2011 Wisconsin Acts 43 and 44 were released to the public on July 8, 2011. Defendants DENY the remaining allegations in ¶ 18.

19. The public aspects of the redistricting process were completed in 12 days:
  - a. On July 13, 2011, the legislature held the first and only public hearing to take testimony on the legislation.
  - b. The Wisconsin Senate Judiciary Committee adopted the redistricting proposal with minor amendments and companion legislation on July 15, 2011.
  - c. The Wisconsin Senate approved the amended legislation and companion legislation regarding redistricting on July 19, 2011. The Assembly approved the legislation on July 20, 2011. On or about August 9, the Governor signed the legislation: 2011 Wisconsin Act 43, pertaining to state legislature districts, and 2011 Wisconsin Act 44, pertaining to the state's congressional districts. A copy of the amendment to redistricting legislation, was attached as Exhibit A to the First Amended Complaint and is incorporated by reference.

**Answer to ¶ 19:** Defendants ADMIT that the Wisconsin Senate and Assembly passed Senate Bills 148 and 149 on July 19 and 20, 2011, which was 12 days after the release of those bills to the public on July 8, 2011.

**Answer to ¶ 19(a):** Defendants ADMIT the allegations of ¶ 19(a).

**Answer to ¶ 19(b):** Defendants ADMIT that the Wisconsin Senate Judiciary Committee adopted Senate Bill 148, Senate Bill 149, and Senate Bill 150 on July 15, 2011, but DENY all other allegations in ¶ 19(b).

**Answer to ¶ 19(c):** Defendants DENY that a copy of the amendment to redistricting legislation was attached as Exhibit A to the First Amended Complaint, and therefore also DENY that the amendment has been incorporated by reference. Defendants ADMIT the remaining allegations in ¶ 19(c).

20. Paragraph 20 of the First Amended Complaint pertain only to the disposition of Wisconsin Act 43, in which the Intervenor-Plaintiffs claim no legal interest. This paragraph is a placeholder to preserve the numbering and format of the complaint.

**Answer to ¶ 20:** Defendants ADMIT this paragraph has no relevance to the Intervenor-Plaintiffs' Complaint and DENY all remaining allegations of ¶ 20.

### ***Congressional Districts***

21. Based on the 2010 Census, the ideal population for each Wisconsin Congressional District is 710,873.

**Answer to ¶ 21:** Defendants assert that as of April 1, 2010, the population of Wisconsin was 5,686,986, which equates to 710,873.25 persons for each of Wisconsin's eight Congressional Districts. Defendants DENY all remaining allegations ¶ 21.

22. The state legislature has the primary responsibility under the United States Constitutions and 2 U.S.C. § 2c to enact a constitutionally valid plan establishing the boundaries for Wisconsin's eight Congressional districts.

**Answer to ¶ 22:** Defendants assert that the United States Constitution and the United States Code are effective according to their terms, and DENY any characterization inconsistent with those terms.

23. On July 19 and 20, the Wisconsin legislature adopted Congressional districts based on the 2010 census. On or about August 9, the Governor signed the legislation, known as 2011 Wisconsin Act 44, into law. Congressional redistricting resulted from the same legislative process and schedule as described in paragraphs 18 and 19, *supra*.

**Answer to ¶ 23:** Defendants ADMIT the first sentence of this paragraph, and restate their answer to paragraphs 18 and 19, above. Defendants ADMIT that the Governor signed 2011 Wisconsin Act 44 into law on August 9, 2011. Defendants DENY all remaining allegations in ¶ 23.

24. The Congressional districts resulting from Act 44, to be used in the 2012 elections, have minimal total population deviations.

**Answer to ¶ 24:** Defendants assert that each of the eight newly-drawn Congressional Districts has a population deviation, based on the total Wisconsin population of 5,686,986, of less than one. Defendants DENY all remaining allegations in ¶ 24.

### **CLAIMS FOR RELIEF**

25. While the new political districts contain small population deviation, they nonetheless violate the U.S. constitutional requirements that each district be compact, preserve the core population of prior districts, and preserve the communities of interest while also preserving equal populations.

**Answer to ¶ 25:** Defendants DENY the allegations of ¶ 25.

26. Wisconsin's redistricting boundaries impermissibly discriminate against the intervenor-plaintiffs in the political process, and use of those boundaries for election in 2010 and beyond will deny the intervenor-plaintiffs the opportunities for a fair and effective election for their Congressional district in 2012 and into the future.

**Answer to ¶ 26:** Defendants DENY the allegations of ¶ 26.

### **FIRST, SECOND AND THIRD CLAIM**

27-44. The First Second and Third Claim, Paragraphs 27-44, and all included subparagraphs, of the First Amended Complaint pertain only to the disposition of Wisconsin Act 43, in which the Intervenor-Plaintiffs claim no legal interest. This paragraph is a placeholder to preserve the numbering and format of the complaint.

**Answer to ¶¶ 27-44:** Defendants ADMIT these paragraphs have no relevance to the Intervenor-Plaintiffs' Complaint and DENY any remaining allegations in ¶¶ 27-44.

### **FOURTH CLAIM**

#### **Congressional Districts Are Not Compact and Fail to Preserve Communities of Interest**

45. Intervenor-Plaintiffs incorporate by reference allegations in paragraphs 1 through 44 above.

**Answer to ¶ 45:** Defendants incorporate their responses to paragraphs 1-44 as though set forth in full here.

46. The Constitution of Wisconsin and the United States require political districts be compact and preserve communities of interest.

**Answer to ¶ 46:** Defendants assert that the United States Constitution and the Wisconsin Constitution are effective according to their terms and DENY any characterization inconsistent with those terms.

47. The compactness of a district refers both to its shape and ability of its citizens to relate to each other and their elected representative and the ability of the representative to relate to his or her constituents.

**Answer to ¶ 47:** Defendants assert that this paragraph contains the intervenor-plaintiffs' characterization of the law, to which no response is required. To the extent any court should construe this paragraph as containing any allegations of fact, defendants lack information sufficient to form a belief as to the truth of those allegations and so DENY the same.

48. As established by Act 44, the Congressional District will fail to meet constitutional standards of compactness.

a. The 7th Congressional district unnecessarily spans a vast area from Superior, Wisconsin in the northwest to just north of Madison in the south and east into Forest County.

b. The 3rd Congressional district unnecessarily spans from the far southwest corner of the state north almost to the Twin Cities and west to the center of the state.

c. The expanse covered by the Congressional districts deprive residents of the opportunity to effectively communicate with their representative and for the representatives to effectively communicate with his or her constituents.

**Answer to ¶ 48:** Defendants DENY the allegations in ¶ 48.

**Answer to ¶¶ 48(a)-48(c):** Defendants DENY all allegations in ¶¶ 48(a) through 48(c).

49. Communities of interest are to be preserved. A “community of interest” is local government or tribal boundary and can also reflect considerations of the citizenry’s ethnicities, cultural affinities and traditional geographical boundaries, historical political representations and need for government services.

**Answer to ¶ 49:** Defendants assert that this paragraph contains the intervenor-plaintiffs’ characterization of the law, to which no response is required. To the extent any court should construe this paragraph as containing any allegations of fact, defendants lack information sufficient to form a belief as to the truth of those allegations and so DENY the same.

50. Fracturing communities of interests by dividing them among Congressional districts negatively impacts the abilities of the representatives to communicate with, relate to and provide adequate representation.

**Answer to ¶ 50:** Defendants assert that this paragraph contains the intervenor-plaintiffs’ characterization of the law, to which no response is required. To the extent any court should construe this paragraph as containing any allegations of fact, defendants lack information sufficient to form a belief as to the truth of those allegations and so DENY the same.

51. The Congressional Districts as established by Act 44 impermissibly do the following:

a. Fox Valley Area: The new legislation unnecessarily fractures the Fox Valley area. The City of Appleton will be divided

between the 8th and the 6th Congressional Districts. The Cities of Neenah and Menasha will be separated from the rest of the Fox Valley area.

b. Milwaukee Area: Milwaukee County will be fractured into four separate districts, compared to the 2002 boundaries where the county was represented by three Representatives.

**Answer to ¶ 51:** Defendants DENY all the allegations in ¶ 51.

**Answer to ¶¶ 51(a)-51(b):** Defendants DENY all the allegations of these subparagraphs.

52. If not otherwise enjoined, the Defendants, the Government Accountability Board, will carry out its responsibilities regarding the 2012 Congressional elections based on these illegally drawn boundaries, which will harm the Intervenor-Plaintiffs.

**Answer to ¶ 52:**

Defendants admit that, pursuant to Act 44, and absent a court order to the contrary, they will cause the Government Accountability Board to conduct the 2012 Congressional elections based on the Congressional Districts established by 2011 Wisconsin Act 44. Defendants DENY all remaining allegations in ¶ 52.

53. Any such election will deprive the Intervenor-Plaintiffs of their civil rights under color of state law in violation of 42 U.S.C. § § 1983 and 1988.

**Answer to ¶ 53:** Defendants DENY all allegations in ¶ 53.

## **FIFTH CLAIM**

### **Congressional and Legislative Districts Constitute Unconstitutional Gerrymandering**

54. Intervenor-Plaintiffs incorporate by reference the allegation in paragraphs 1 through 53 above.

**Answer to ¶ 54:** Defendants incorporate their responses to paragraphs 1-53 as though set forth in full here.

55. The First and Fourteenth Amendments to the United States Constitution require that all citizens have an equal opportunity to elect their Congressional

representatives and prohibit vote dilution by gerrymandering which substantially disadvantages voters or candidates of one party and deprive them of their opportunity to influence the political process.

**Answer to ¶ 55:** Defendants assert that the First and Fourteenth Amendments to the United States Constitution are effective according to their terms and DENY any characterization contrary to those terms. The defendants DENY all remaining allegations in ¶ 55.

56. The majority's legislative leadership in the Wisconsin legislature systematically created Congressional districts to give their party an unfair electoral advantage in an attempt to preserve political majorities.

a. Paragraph 56, subparagraph (a) of the First Amended Complaint pertains only to the disposition of the Wisconsin Act 43, in which the Intervenor-Plaintiffs claim no legal interest. This paragraph is a placeholder to preserve the numbering and format of the complaint.

b. Paragraph 56, subparagraph (b) of the First Amended Complaint pertains only to the disposition of the Wisconsin Act 43, in which the Intervenor-Plaintiffs claim no legal interest. This paragraph is a placeholder to preserve the numbering and format of the complaint.

**Answer to ¶ 56:** Defendants DENY the allegations in ¶ 56.

**Answer to ¶¶ 56(a)-56(b):** Defendants ADMIT these subparagraphs have no relevance to the Intervenor-Plaintiffs' Complaint and DENY any remaining allegations of these subparagraphs.

57. The new Congressional districts will impermissibly degrade the influence of minority party votes on the political process and the ability of the Intervenor-Plaintiffs to meaningfully run for re-election.

**Answer to ¶ 57:** Defendants DENY the allegations of ¶ 57.

58. Paragraph 58 of the First Amended Complaint pertains only to the disposition of the Wisconsin Act 43, in which the Intervenor-Plaintiffs claim no legal interest. This paragraph is a placeholder to preserve the numbering and format of the complaint.

**Answer to ¶ 58:** Defendants ADMIT this paragraph has no relevance to the Intervenor-Plaintiffs' Complaint and DENY any remaining allegations in ¶ 58.

59. As a result of Act 44, Intervenor-Plaintiffs will not be able to fairly and able represent their constituents in 2012 and beyond.

a The minority party was denied a fair chance to participate in the redistricting process.

b. The minority party in the state legislature has been denied access to the political process throughout the 2011-12 legislative term.

**Answer to ¶ 59:** Defendants DENY the allegations in ¶ 59.

**Answer to ¶¶ 59(a)-59(b):** Defendants DENY the allegations of these subparagraphs.

60. If not otherwise enjoined, the Defendants, the Government Accountability Board, will carry out its responsibilities regarding the 2012 Congressional elections based on these illegally drawn boundaries, which will harm the Intervenor-Plaintiffs.

**Answer to ¶ 60:** Defendants ADMIT that, pursuant to Act 44, and absent a court order to the contrary, they will cause the Government Accountability Board to conduct the 2012 Congressional elections based on the Congressional Districts established by 2011 Wisconsin Act 44. Defendants DENY all remaining allegations in ¶ 60.

61. Any such election will deprive the Intervenor-Plaintiffs of their civil rights under color of state law in violation of 42 U.S.C. § 1983 and 1988.

**Answer to ¶ 61:** Defendants DENY the allegations in ¶ 61.

## **SIXTH CLAIM**

62-71. The Sixth Claim, Paragraphs 62-71, including all subparagraphs, of the First Amended Complaint pertains only to the disposition of the Wisconsin Act 43, in which the Intervenor-Plaintiffs claim no legal interest. This paragraph is a placeholder to preserve the numbering and format of the complaint.

**Answer to ¶¶ 62-71:** Defendants ADMIT these paragraphs have no relevance to the Intervenor-Plaintiffs' Complaint and DENY any remaining allegations of these paragraphs.

## **SEVENTH CLAIM**

72. Intervenor-Plaintiffs incorporate by reference the allegation in paragraphs 1 through 71 above.



**Answer to ¶ 72:** Defendants incorporate their responses to paragraphs 1-71 as though set forth in full here.

73. The Fourteenth Amendment allows some deviation from population equality in political boundaries if based on established redistricting policies.

**Answer to ¶ 73:** Defendants ADMIT the Fourteenth Amendment is effective according to its terms and DENY any characterization inconsistent with those terms. Defendants DENY all remaining allegations in ¶ 73.

74. The legislature failed to consider principles of compactness, communities of interests and preserving core populations in drawing the new district boundaries.

**Answer to ¶ 74:** Defendants DENY the allegations in ¶ 74.

75. Paragraph 75 of the First Amended Complaint pertains only to the disposition of the Wisconsin Act 43, in which the Intervenor-Plaintiffs claim no legal interest. This paragraph is a placeholder to preserve the numbering and format of the complaint.

**Answer to ¶ 75:** Defendants ADMIT this paragraph has no relevance to the Intervenor-Plaintiffs' Complaint and DENY any remaining allegations in ¶ 75.

76. The State of Wisconsin has no justification for any population deviation. The population deviations are greater than necessary because they do nothing to preserve the communities of interests or core populations, and are not based on local boundaries.

**Answer to ¶ 76:** Defendants DENY the allegations in ¶ 76.

77. There is no legitimate state interest that justifies the new Congressional districts.

**Answer to ¶ 77:** Defendants DENY the allegations in ¶ 57.

78. If not otherwise enjoined, the Defendants, the Government Accountability Board, will carry out its responsibilities regarding the 2012 Congressional elections based on these illegally drawn boundaries, which will have the Intervenor-Plaintiffs.

**Answer to ¶ 78:** Defendants ADMIT that, pursuant to Act 44, and absent a court order to the contrary, they will cause the Government Accountability Board to conduct the 2012

Congressional elections based on the Congressional Districts established by 2011 Wisconsin Act 44. Defendants DENY all remaining allegations in ¶ 78.

79. Any such election will deprive the Intervenor-Plaintiffs of their civil rights under color of state law in violation of 42 U.S.C. § § 1983 and 1988.

**Answer to ¶ 79:** Defendants DENY the allegations in ¶ 79.

### **AFFIRMATIVE DEFENSES**

1. Intervenor-plaintiffs have failed to state a claim for which relief may be granted as a matter of law.

2. Intervenor-plaintiffs have failed to set forth a basis upon which they are entitled to declaratory or injunctive relief as there has been no violation of either the Wisconsin or Federal Constitution through the enactment of the new redistricting boundaries.

3. 2011 Wisconsin Act 44 directly advances state and/or governmental interests and it is not more extensive than necessary to serve those interests.

4. 2011 Wisconsin Act 44 is presumed to be valid, *Davis v. Grover*, 166 Wis. 2d 501, 520, 480 N.W.2d 460 (1992), and the burden is on the challenger to prove beyond a reasonable doubt that they are unconstitutional. *State v. Chvala*, 2004 WI App 53, ¶ 9, 271 Wis. 2d 115, 678 N.W.2d 880; *State ex rel. Hammermill Paper Co. v. La Plante*, 58 Wis. 2d 32, 46, 205 N.W.2d 784 (1973). It is not enough that a challenger establish doubt as to an act's constitutionality nor is it sufficient that a challenger establish the unconstitutionality of an act is a possibility. *Id.* If any doubt exists, it must be resolved in favor of constitutionality. *State ex rel. Thomson v. Giessel*, 265 Wis. 558, 564, 61 N.W.2d 903 (1953).

5. The State Constitution vests the State Legislature with the authority to reapportion the legislative boundaries every ten years. Wis. Const. art. IV, § 3; U.S. Const. art. I, § 2; *Grove v. Emison*, 507 U.S. 25, 34 (1993). "In the reapportionment context, the [United States Supreme]

Court has required federal judges to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself.” *Grove*, 507 U.S. at 33 (emphasis in original). Here, the State Legislature has completed redistricting plans which have been signed into law. Even without 2011 Wisconsin Act 39 (which established the state court procedure to challenge redistricting maps), the state judiciary is the next appropriate venue for any constitutional challenges. Pursuant to the United States Supreme Court’s dictates, first set forth in 1965 in *Scott v. Germano*, 381 U.S. 407 (1965) (*per curiam*), state legislatures and judiciaries are to have the primary redistricting responsibilities.

6. “Federal-court review of districting legislation represents a serious intrusion on the most vital of local functions.” *Miller v. Johnson*, 515 U.S. 900, 915 (1995). “It is well settled that ‘reapportionment is primarily the duty and responsibility of the State.’” *Id.* (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)). The State Legislature has broad power and vast discretion to make policy decisions as to the drawing of redistricting maps after a decennial census.

7. The congressional districts created in 2011 Wisconsin Act 44 do not unconstitutionally sacrifice redistricting principles.

8. The congressional districts satisfy the requirement that they be as geographically compact as is practicable. Wis. Const. art. IV, § 4; *Wisconsin State AFL-CIO v. Elections Board*, 543 F. Supp. 630, 634 (E.D. Wis. 1982) (“The constitutional requirement of compactness is not absolute . . .”).

9. The congressional districts created in 2011 Wisconsin Act 44, to the extent possible, recognize local government boundaries. “While maintaining the integrity of county lines may be a desirable objective, [the Courts] believe its general incompatibility with

population equality makes it only a consideration of secondary importance.” *Wisconsin State AFL-CIO*, 543 F. Supp. at 635.

12. There is no basis for intervenor-plaintiffs’ claim that the congressional districts unlawfully dilute votes or have been created as a form of partisan gerrymandering to substantially disenfranchise votes of one party in order to influence the political system. Moreover, without conceding that there was a partisan basis for the new district boundaries, “[t]he fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness.” *Burns v. Richardson*, 384 U.S. 73, 89, n.16 (1966). Finally, and of more import, the claim of political gerrymandering in a congressional redistricting plan is non-justiciable because there are no judicially discernable and manageable standards for adjudicating such a claim. *Vieth v. Jubelirer*, 541 U.S. 267, 281 (2004) (plurality). Accordingly, the Fifth Cause of Action should be dismissed as a matter of law.

13. 2011 Wisconsin Act 44 does not violate any provision of the Voting Rights Act.

14. 2011 Wisconsin Act 44 does not unconstitutionally use race as a predominant factor.

15. Assuming, *arguendo*, that 2011 Wisconsin Act 44 is susceptible to two constructions, by one of which constitutional questions arise and by the other of which such questions are avoided, the courts are required to adopt the latter construction and to interpret the redistricting legislation so as not to render it unconstitutional or void. *Basinas v. State*, 104 Wis. 2d 539, 546, 312 N.W.2d 483 (1981); *State ex rel. Harvey v. Morgan*, 30 Wis. 2d 1, 13, 139 N.W.2d 585 (1966).

16. Defendants incorporate by reference, and reserve the right to assert, any and all of the Affirmative Defenses set forth by any other defendants or intervenor-defendants.

WHEREFORE, defendants, the Members of the Wisconsin Government Accountability Board – Michael Brennan, David Deininger, Gerald Nichol, Thomas Cane, Thomas Barland, and Timothy Vocke – and Kevin Kennedy, Director and General Counsel, demand judgment:

1. Denying the declaratory relief sought by intervenor-plaintiffs.
2. Denying the injunctive relief sought by intervenor-plaintiffs.
3. Dismissing this complaint on its merits and with prejudice.
4. Awarding defendants their costs and reasonable attorneys' fees.
5. Such other and further relief as the Court may deem appropriate.

Dated this 5th day of December, 2011.

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